

# Health Care Consent, Substitute Decision-Makers and Advance Care Planning

## CONSENT

### What is health care consent?

Health care consent is making an informed decision to accept or refuse care or treatment. It is based on information the health care provider explains about the person's condition, treatment options, risks, benefits, side effects, alternatives and what would happen if treatment is refused.

### When is consent required?

Consent is required when proposing a plan of care, a new treatment, a change in medication or a change to a current treatment.

### What about consent in emergencies?

In an emergency, health practitioners may provide treatment without obtaining consent but must follow any known wishes of the resident in respect to the treatment.

### Who can give consent?

A resident who is mentally capable can provide or refuse consent. If a resident becomes incapable of giving consent due to cognitive or mental health changes, a substitute decision-maker (SDM) is needed to provide informed consent on his/her behalf.



### Who determines if a resident is mentally incapable?

The health care provider who is proposing the care or treatment can determine if the resident is mentally capable of consenting to treatment. This could be the Home's physicians, nurses, occupational therapists, social workers or other health care professionals.



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What is the difference between an SDM, a Power of Attorney for Personal Care and next-of-kin?

A Power of Attorney for Personal Care is a type of SDM officially appointed by a mentally capable resident to make health care decisions for him/her if the resident becomes mentally incapable in the future. The Power of Attorney for Personal Care is a document in which the resident names his/her attorney for personal care. The document must be signed by the resident and witnessed.

Next-of-Kin is a term that is no longer used in matters related to obtaining health care consent. Being related to the resident does not give someone authority to make decisions for or ask for health care information about that resident. Only SDMs (or Power of Attorneys for Personal Care) have this authority.



## SUBSTITUTE DECISION-MAKERS (SDMs)

What is an SDM?

An SDM is the person who will make health care decisions on behalf of the resident if the resident becomes mentally incapable to make these decisions.

Are residents required to appoint SDMs?

No, but it is a good idea to choose the person you want to make health care decisions on your behalf in case you become unable to do so. Otherwise, if you do not have an SDM and become mentally incapable of making decisions about your care, staff must look to the *Health Care Consent Act*, an Ontario law, to determine who can make health care decisions for you.

Does the resident need to document in writing who he or she has chosen to be their SDM?

It is always best to document your wishes in writing. If you have chosen an SDM and recorded it in writing, give the Home a copy of this document. If you have chosen an SDM but have not written it down, tell your health care team at your Admission Care Conference. They will document this in your records. If you have appointed a Power of Attorney for Personal Care, provide the Home with a copy of this document.

If at any time you change the person who will be your SDM, please notify the Home so we can ensure your wishes are followed.

## What are the requirements to be an SDM?

The SDM must meet the following criteria:

- ✓ Be capable of making decisions regarding treatment
- ✓ Be 16 years old
- ✓ Not be prohibited by a court order or separation agreement from having access to the resident or giving or refusing consent on his/her behalf
- ✓ Available (e.g., in person, by phone, email)
- ✓ Willing to assume responsibility for providing/refusing consent



## What are the responsibilities of the SDM?

The SDM (or Power of Attorney for Care) must:

1. Follow the resident's wishes expressed when he/she was capable.
2. If the resident's prior wishes are unknown or impossible to carry out, act in the resident's best interests and consider if the proposed treatment is likely to:
  - Improve the resident's quality of life
  - Prevent or reduce the deterioration of the resident's quality of life
  - Provide benefits that outweigh the risk of negative consequences for the resident
  - Be more appropriate than any other course of action for the resident

## When does the SDMs decision-making authority take effect?

The SDM's authority to make health care decisions for the resident and to have information on the resident's health status shared with him/her **takes effect when the resident becomes mentally incapable**. If a resident is mentally capable, the Home's staff follow his/her treatment wishes and decisions regardless of whether or not an SDM has been appointed, and will not discuss these issues with the SDM unless asked to do so by the resident.

## SDMs AND ADVANCE CARE PLANS

### What is advance care planning?

Advance care planning is the process where a person reflects upon his/her values and beliefs and expresses his/her wishes for future care and treatment in case of becoming mentally incapable of making such decisions in the future. Only the resident can do advance care planning, not the SDM.

Wishes can be expressed in any form (verbal, writing, audio, video tape), and can be changed at any time. It is important to share the wishes with the SDM, family members and the Home so that they are aware of your preferences.

If a resident becomes mentally incapable, the SDM must follow the resident's previously expressed wishes to give or refuse consent to treatment or make other health decisions for the resident.



## NEED MORE INFORMATION?

The following resources may help:

**Consent and Capacity Board of Ontario**

[www.ccboard.on.ca](http://www.ccboard.on.ca)

**Office of the Public Guardian and Trustee**

[www.attorneygeneral.jus.gov.on.ca/english/family/pgt](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt)

**Advocacy Centre for the Elderly**

[www.advocacycentreelderly.org](http://www.advocacycentreelderly.org)



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